



# Law Journal

DEPARTMENT OF AGRICULTURE • RURAL ELECTRIFICATION ADMINISTRATION

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## Book Review

### THE LAW OF THE ORGANIZATION AND OPERATION OF COOPERATIVES

By Israel Packel

Matthew, Bender & Co., Albany, N.Y. 1940, 1 vol.,  
307 pp., Price: \$5.00

The REA Law Journal is running a leading article on a new book. Why? Because this is the first book concerned with the law of cooperatives in general. Every legal text on cooperatives prior to the present one has concerned itself entirely or primarily with marketing cooperatives.<sup>1/</sup> It is true that there exists an English textbook on the law of cooperatives, but this is really an annotated compilation of the Statutes of England relating to cooperatives.<sup>2/</sup>

Since cooperatives form the backbone of the rural electrification program, and this is the first text on the law of cooperatives in the United States the REA Law Journal feels that it is only natural that a leading article should be devoted to the review of the book.

It should be noted at the outset, that the author wrote the book with an eye to having it used not only by lawyers, but also by laymen interested in the problems of cooperatives. To write a text of law with a dual style is extremely difficult, but this book has achieved the purpose—if such a goal can be reached. The first re-

action of many lawyers to a law book intended for both laymen and lawyers is that legal problems ought to be left to the lawyers. The author answers this in his preface by the statement: "Too often has the success of a cooperative enterprise been jeopardized by the failure of a lay person to appreciate the existence of a legal problem." It is the laymen who organize the cooperative, and it is the laymen who first encounter legal problems. It is the author's hope that by reading the text, laymen may become acquainted with legal problems and know when to consult an attorney.

Much of the law of cooperatives is similar to the law of corporations and the law affecting other associations. The author has attempted to include enough general corporation law to give

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<sup>1/</sup> All the texts on marketing cooperatives are collected and cited in Packel, The Law of Cooperatives (1940) 2, n.2

<sup>2/</sup> Fuller, the Law Relating to Friendly Societies, and Industrial and Provident Societies (4th ed. 1926)

a rounded picture. However, the bulk of the discussion is confined to purely cooperative problems of a legal nature. To attorneys engaged in the practice of the law relating to cooperatives a discussion of this nature is fascinating. We find the problems we treat and deal with every day, down in black and white. Should cooperatives be subject to commission jurisdiction? The author (an authority on the subject in his own right<sup>3/</sup>) includes an entire section devoted to just this problem. May a municipality become a member of a cooperative? What types of taxes are particularly inapplicable to cooperatives? These and other problems of general interest find their proper places in the text. Moreover, the author does not confine himself to the broad general cooperative problems, but enters into a treatment of the small day-to-day cooperative problems. The clearest method of demonstrating this is by quoting a few of the section headings: "Signing Up Cooperators," "Meetings," "Quorum," "Voting in Person at Meetings," "Proxy Voting."

The book also contains about 30 pages of working forms for cooperatives. There is presented a complete bibliography of texts, law reviews, and other written material available on the law of cooperatives. An examination of this list is a commentary on the scarcity of material available to those interested in the law of cooperatives.

#### ADMINISTRATIVE INTERPRETATIONS

Federal power license required regardless of state permit.

The question before the Federal Power Commission was whether a project could be constructed on navigable water of the United States where the state having jurisdiction had granted permission for construction. The Commission ruled that under Section 23b of the Federal Power Act it would be unlawful for any person, state or

municipality "for the purpose of developing electric power, to construct, operate, or maintain" a dam in any of the navigable waters of the United States without a permit from the Commission. (This ruling inapplicable to rights of way granted prior to June 10, 1920). It should be noted that the language of the section in question requires the existence of a "permit". The contention was that a state permit should be sufficient. The Commission, however, ruled that this terminology indicated the requirement of a Federal permit and that a state permit was insufficient. In re Bellows Falls Hydro-electric Corp., F.P.C. Op. No. 60, (March 4, 1941).

Power of municipality to extend utility facilities beyond corporate limits and pay therefor through revenue.

A Florida municipality adopted an ordinance, without a vote of the citizens of the City, which purported to issue certificates to be paid out of revenue from the sale of water after extension was made to the city water system outside the corporate limits. The controversy involves the power of the municipality to extend its water works system into the area beyond the corporate limits of the city in this manner. The court held that the municipality was authorized and justified. State v. Pensacola, 197 So. 520 (Fla. 1940)

"The ordinance authorizing the issuance of the certificates brought in question declared that it was necessary and imperative for the protection of the public health of the City to extend its water supply and distribution system into the unincorporated areas adjacent thereto . . . This declaration of policy was supported by the testimony of the City

3/ See Packel, Commission Jurisdiction over Utility Cooperatives (1937) 35 Mich. L. Rev. 411

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Engineer and the County Health Officer and the basis of their judgment is convincing to anyone. The record further discloses that the general taxing power of the City is not invoked for the payment of said certificates, that it is convincing to anyone. The record further discloses that the general taxing power of the City is not invoked for the payment of said certificates, that it is proposed to liquidate them, both principal and interest, with net revenues from the water works system and that such revenues for the five years last past are shown to have been ample for this purpose. . . . On this showing, the Chancellor held that the City was fully authorized to issue the certificates without an approving vote of the freeholders." This holding was approved.

Negligence - Maintenance of un-insulated electric wires as a

nuisance.

High tension wires of defendant power company passed through the foliage of a tree adjacent to the residence of plaintiff's intestate. At times the wires, which were improperly insulated, would come in contact with the tree and the current of electricity would thereby be diverted through its limbs to the house. To eliminate this difficulty, plaintiff's intestate climbed the tree and began to saw off the offending limbs. Before this task could be completed, however, he came in contact with the current and was instantly electrocuted and killed.

In an action to recover damages the plaintiff contended that the defendant was guilty of negligence in maintaining its wires without proper insulation, and that the existence of such a situation constitutes "a public or private nuisance." The lower court refused to submit to the jury the issue of nuisance and confined the issues to negligence and contributory negligence. From a judgment in favor of defendant, plaintiff appealed on the ground that the failure to submit the issue of nuisance was error. Held, judgment affirmed. Butler v. Carolina Power & Light Co., 10 S.E. (2d) 603 (N.C. 1940).

Conceding the correctness of plaintiff's theory that there may be nuisances which do not involve negligence, the court refused to find that the facts of this case justified such a classification. The court said, "Under the facts of this case, we see no transmutation of negligence to nuisance which would prevent the rights and liabilities of the parties from being properly probed by the issues

submitted to the jury."

Injunction--suit for injunction by airport owner to prevent erection of transmission line near airport.

Airport operators brought an action to enjoin the owner of land adjacent to the airport from erecting electric transmission lines on his premises. The complainants alleged that the existence of the transmission lines would interfere with the use of the airport. A Michigan statute, Mich. Comp. Laws (1929) sections 4811-21, provided that the ownership of the space above the land shall be vested in the owners of the land subject to the right of flight of aircraft except flight at such low altitudes as to interfere with the existing use of the land. Held, that the injunction be denied. Guith v. Consumers Power Co., 36 F. Supp. 21 (C.D. Mich. 1940)

The court pointed out that both under common law and the statutory law of Michigan the landowner still "owns" the air space above his land subject to the public right or privilege of flight. However, the court qualified the doctrine of right of flight to state that "only such flights are privileged and lawful as do not interfere with the lawful use and possession made and to be made by the landowner of the surface and the air space above it." The ruling of the court indicates that the landowner is not limited in his use of the air space so as not to interfere with aircraft. It is interesting to note that in a similar case in Indiana, Capitol Airways v. Indianapolis Power and Light Co., 215 Ind. 462, 18 N.E. (2d) 776 (1939), the court held under an identical statute that an airport operator could not recover damages for the destruction of the usefulness

resulting from the construction of a transmission line on a right-of-way adjoining the airport.

Commission Jurisdiction--jurisdiction of state commission over power contract subject to approval by Federal Power Commission

A Wisconsin power company filed with the Wisconsin Public Service Commission a power contract it had executed with its affiliate, a Minnesota power company. The question was presented as to the necessity of obtaining commission approval (provided for in Wisconsin statutes) in view of the adoption of the Federal Power Act giving the Federal Power Commission regulatory jurisdiction over interstate deliveries of power. The Wisconsin company contended that since the contract had to be approved by the Federal Power Commission there was no necessity for obtaining approval by the Wisconsin Commission. Held, that the Wisconsin Public Service Commission has jurisdiction over the contract in question notwithstanding the regulation by the Federal Power Commission. Re Northern States Power Co. v. Wis., 35 P.U.R. (n.s.) 193 (Wis. P.S.C. 1940).

The commission felt that after considering the provisions of the Federal Power Act it was clear that there was no Congressional intention to interfere with state regulation over public utilities, except in that it might deprive the State Commission of jurisdiction over rates and standards for interstate services. The commission pointed out that such superseding regulation related only to transmission of energy and not generation thereof. Since this contract involved generation of energy, the commission ruled that

it had jurisdiction over it.

Public Utilities--discontinuance of service to one found guilty of tampering with meters.

Complainant filed a complaint with the Pennsylvania Public Utility Commission alleging that the defendant utility discontinued service upon complainant's failure to pay a charge assessed against him of approximately \$10 for meter repairs and \$12 for unregistered electricity used. The testimony showed that on each reading of the complainant's meter, tampering was discovered by the meter reader. Evidence was also presented to the effect that from the time the tampering was noticed there was a drop in consumption of energy by complainant. The regulations of the defendant power company provided that where equipment has been tampered with the customer shall be required to pay for such electric energy as the company might estimate to have been used but not registered and, in addition, shall pay the cost incurred by the company for investigation and inspection. Held, complaint be dismissed. Kersten v. Duquesne Light Co., 35 P.U.R. (n.s.) 126 (Pa. P.U.C. 1940). The commission stated "that meter tampering results in discrimination against consumers whose meters are operated without interference, and. . . a public utility is justified in discontinuance of service, or other action under its tariff, to prevent such discrimination where the evidence of tampering is established."





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